

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

COMMONWEALTH SCIENTIFIC AND
INDUSTRIAL RESEARCH
ORGANISATION,

VS.

TOSHIBA AMERICA INFORMATION
SYSTEMS, INC., ET AL.,

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Case No. 6:06-CV-550 (LED)

**DEFENDANTS ACCTON TECHNOLOGY CORPORATION, 3 COM CORPORATION,
SMC NETWORKS, INC. AND D-LINK SYSTEMS, INC.’S PETITION FOR A LETTER
OF REQUEST FOR INTERNATIONAL JUDICIAL ASSISTANCE**

Defendants Accton Technology Corporation, 3 Com Corporation, SMC Networks, Inc., and D-Link Systems, Inc. (collectively “Defendants”) respectfully move this Court to issue a Letter of Request for International Judicial Assistance to the Supreme Court of New South Wales. Defendants seek testimony of Dr. David Skellern. The evidence request is both material and relevant to this action and Defendants intend to use the testimony as evidence at trial.

Dr. Skellern is a unique witness in this proceeding because of his involvement in relevant events spanning over ten years. Dr. Skellern worked at Macquarie University in Australia in the early 1990s. While at Macquarie University, Dr. Skellern collaborated with CSIRO on its wireless LAN project, which resulted in the application for and subsequent issuance of CSIRO’s ‘069 Patent.

In the mid-1990s, Dr. Skellern co-founded Radiata Communications Pty Ltd. (“Radiata”), an Australian corporation. In February 1998, CSIRO entered into its first license agreement for its ‘069 Patent with Radiata. At that time, Dr. Skellern was Radiata’s Chief Technology Officer, and he played a lead role in the negotiations on behalf of Radiata that resulted in the license

agreement with CSIRO. Radiata was the only company to obtain a license to the ‘069 Patent prior to the initiation of this litigation.

While working at Radiata, Dr. Skellern was a member of the Institute of Electrical and Electronics Engineers (“IEEE”). Specifically, he was an officer on the 802.11 Standards Committee during the time frame when CSIRO’s claimed wireless technology – as embodied in its ‘069 Patent – was allegedly incorporated into the IEEE’s 802.11a and 802.11g standards.

In November 2000, Cisco Systems, Inc. (“Cisco”) acquired Radiata. Dr. Skellern played a lead role in the negotiations on behalf of Radiata in that acquisition. Thereafter, Dr. Skellern carried on as a Cisco employee in its Wireless Networking Business Unit.

An order issued by this Court on May 10, 2007 provides that “no single deposition of any one witness can exceed two consecutive business days, except by mutual agreement.” Defendants provide that Dr. Skellern has only previously been subject to one day of deposition on October 24, 2007. Defendants provide that counsel for defendants did not close the deposition. Upon Defendants’ request, CSIRO has refused to voluntarily produce Dr. Skellern for his second day of deposition. Defendants now request the issuance of a Letter of Request for International Judicial Assistance so as to obtain Dr. Skellern’s testimony for use at trial as Dr. Skellern resides in Australia.

A Letter of Request for International Judicial Assistance (“Letter of Request”) is necessary to obtain the testimony requested as Australia is a party to the Hague Convention of the Taking of Evidence Abroad in Civil and Commercial Matters. This Court can issue the Letter of Request to request the testimony of a witness in Australia. *See* 28 U.S.C. § 1781, Fed. R. Civ. P. Rule 28(b). The Defendants have conferred with counsel in Australia regarding the form of the proposed Letter of Request submitted herewith to ensure that it will be acceptable to the Supreme Court of New South Wales.

WHEREFORE, Defendants respectfully request that this Court issue a Letter of Request to the Supreme Court of New South Wales requesting the deposition upon oral examination of Dr. David Skellern. Defendants respectfully request that this Court signs the “Letter of Request

for Deposition of David Skellern Pursuant to The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters" attached hereto as Exhibit A.

Dated: September 2, 2008

Respectfully Submitted,

By:/s/ William Cornelius

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on September 2, 2008. Any other counsel of record will be served by First Class U.S. mail on this same date.

/s/ William Cornelius